

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-279-T – ORDER NO. 2006-117

FEBRUARY 27, 2006

IN RE: Application of Luis Felipe Denis d/b/a Denis ) ORDER GRANTING  
Transportation Co., 102 Ashton Hill Drive, ) CLASS C CERTIFICATE  
Columbia, SC 29229 (District 2) for a Class C )  
Certificate of Public Convenience and )  
Necessity. )

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Luis Felipe Denis, D/B/A Denis Transportation Co. (the Applicant or Denis) for a Class C Certificate of Public Convenience and Necessity, to render motor passenger service as follows:

BETWEEN POINTS AND PLACES IN KERSHAW, LEXINGTON, AND  
RICHLAND COUNTIES, SOUTH CAROLINA.

RESTRICTED TO: FIVE (5) PASSENGERS.

Procedural History

The Applicant filed an Application for Class C Certificate of Public Convenience and Necessity on or about September 15, 2005. On September 19, 2005, the Office of Regulatory Staff (ORS) requested that the Commission hold the docket open pending the completion of ORS's investigation. On September 21, 2005, ORS filed a Motion to Hold a Formal Hearing in this matter. On September 28, 2005, the Commission granted the motion, and a hearing was conducted before the full Commission on January 11, 2006. At the hearing, the Applicant was represented by Dallas D. Ball, Esquire, and ORS was represented by Benjamin P. Mustian, Esquire.

Discussion

The Applicant, Luis Felipe Denis, has operated a taxicab in Kershaw, Lexington, and Richland Counties for sixteen years. Denis currently operates his cab under the Class C Certificate issued to Checker-Yellow Cab Co., Inc. of Cayce, South Carolina. Denis now seeks to obtain his own Class C Certificate. According to his testimony and filings, Denis would, if his application is granted, continue to operate his cab as a Checker-Yellow cab. His cab would continue to be titled to Checker-Yellow Cab Co., and he would continue to maintain the required statutory minimum level of insurance coverage through Checker-Yellow's self-insurance. Uncontroverted testimony at the hearing established that Denis would operate his cab in essentially the same manner as he had in the prior sixteen years, with the only difference being that Denis would hold his own Class C Certificate rather than operate the cab under the authority granted to Checker-Yellow.

In the hearing, the Office of Regulatory Staff sought the Commission's ruling as to whether it is permissible under the currently applicable statutes and regulations for an individual certificate holder to utilize the self-insurance coverage provided by another entity in lieu of traditional third-party coverage provided by a commercial insurance carrier.

ORS offered the testimony of L. George Parker, Jr., who confirmed that the ORS would have no objection generally to Denis's cab being certificated to Denis individually while still operating as a Checker-Yellow Cab, but that ORS questioned the propriety of Denis's intent to rely upon the self-insurance certificate of Checker-Yellow Cab Co. to provide the insurance coverage required by law. Parker testified further that the granting

of Class C Certificates to individual cab operators is beneficial from an enforcement standpoint, inasmuch as it allowed better enforcement of rules and regulations upon individual cab operators and removed the potential obstacle to enforcement presented by some of the larger cab companies' purported lack of control over individual operators, whom the companies often seek to characterize as independent contractors.<sup>1</sup> Parker specifically cited with approval Call A Cab, LLC as an example of a company which both holds its own Class C Certificate and does business with several individuals operating cabs under the Call A Cab brand but holding their own Class C Certificates. (See, documents relating to Docket Nos. 2005-305-T, 2005-312-T, 2005-313-T, 2005-316-T, and 2005-326-T). The sole distinction Parker testified to between the present Applicant and the recently approved, individually certificated Call A Cab drivers was that the Call A Cab drivers used insurance procured from a traditional insurer, while the present Applicant proposes to be insured under the Checker-Yellow Cab Co. self-insurance certificate.

The Motor Vehicle Financial Responsibility Act, S.C. Code Ann. §56-9-60 (Supp. 2004), specifically authorizes self-insurance of vehicles. The Supreme Court of South Carolina has long held that self-insurers provide a substitute for an insurance policy, and that self-insurers are required to provide the same protection to the public that a statutory liability policy provides. Wright v. Smallwood, 308 S.C. 471, 474, 419 S.E.2d 219, 221

---

<sup>1</sup>The Commission takes judicial notice that various courts and other adjudicative bodies make findings as to independent contractor or employee status for different purposes, and that there are several different legal tests for determining such status. Because the Application before us does not require us to express a view as to whether the Applicant or other similarly-situated individuals are employees or independent contractors, and because any such dicta would be of no binding precedential value upon any other adjudicative body, we expressly decline to address the issue.

(S.C. 1992); Southern Home Ins. Co. v. Burdette's Leasing Service, Inc., 268 S.C. 472, 477, 234 S.E.2d 870, 872 (S.C. 1977). Legally, there is no difference between the coverage obligations assumed by the self-insurer and those imposed upon a traditional insurance carrier. The protection afforded the public by a properly issued self-insurance certificate is equivalent to that afforded by an insurance policy with the same level of coverage.

The Commission takes judicial notice that self-insurance is not without precedent in the taxicab industry. See, Wright v. North Area Taxi, Inc., 337 S.C. 419, 523 S.E.2d 472 (Ct. App. 1999) (addressing coverage issues in accident involving self-insured cab company). If the requirements of S.C. Code Ann. §56-9-60 (Supp. 2004) and the applicable Regulation promulgated by the Department of Public Safety (now the Department of Motor Vehicles), 23A S.C. Code Ann. Regs. 38-121 (Supp. 2005), are met, the Class C Certificate sought by the Applicant must be granted. Undisputed testimony from the hearing in this matter indicates that the subject cab is titled to Checker-Yellow Cab Co., and that Checker-Yellow has fulfilled the requirements of the Department of Motor Vehicles to be granted self-insurer status. That the Applicant is fit, willing, and able to provide taxi services is not in dispute. Nor is there any doubt that the Certificate would serve the public convenience and necessity.

#### Findings of Fact and Conclusions of Law

1. The use of self-insurance by taxicabs in lieu of conventional insurance coverage is statutorily authorized by the Motor Vehicle Financial Responsibility Act, S.C. Code Ann. §56-9-60 (Supp. 2004), and the use of such self-insurance coverage shall not be a bar to the issuance of a Class C Taxi Certificate, as long as the Applicant and the

entity holding the Self-Insurance Certificate issued by the South Carolina Department of Motor Vehicles comply with all applicable statutes and regulations and maintain liability coverage on the operator and vehicle equal to or greater than the minimum coverage levels specified in 26 S.C. Code Ann. Regs. 103-172 (Supp. 2005).

2. It is unnecessary for the Commission to make any determination as to this or any other Applicant's status as an employee or independent contractor in connection with the issuance of a Class C Taxi Certificate. Accordingly, the Commission expressly declines to opine on this legal question, the answer to which may vary depending upon the context and forum in which it is raised.

3. The Applicant is fit, willing, and able to provide taxi services to Kershaw, Lexington, and Richland Counties, South Carolina.

4. The public convenience and necessity would be served by the issuance of a Class C Taxi Certificate to the Applicant.

#### Conclusion

Upon consideration of the Application, the representations contained therein and the documentary evidence attached thereto, the Commission finds that the Applicant is fit, willing and able to perform the service to the public under the authority sought. The Commission also finds that the granting of the Certificate is required by public convenience and necessity. The Commission's review of the Application, and the nature of the taxi cab business,<sup>2</sup> leads this Commission to find that the instant Application should be approved.

---

<sup>2</sup> See, e.g., Order No. 79-26, issued in Docket No. 78-491, IN RE: Application of Right's Transportation Service, Inc., on February 27, 1979.

IT IS THEREFORE ORDERED:

1. That the Application of Luis Felipe Denis, D/B/A Denis Transportation Co. for a Class C Certificate of Public Convenience and Necessity is hereby approved.

2. That within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission, the Applicant cause to be filed with the Office of Regulatory Staff (ORS) the license fees, proof of liability insurance, and all other information required pursuant to S.C. Code Ann. §58-23-10, et seq. (1976), as amended; 26 S.C. Code Ann. Regs. 103-100, et seq. (1976), as amended; and 23A S.C. Code Ann. Regs. 38-400, et seq. (1976), as amended.

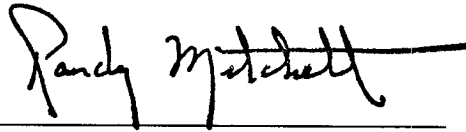
3. That the failure of the Applicant either (1) to comply with the requirements to pay license fees and file with the ORS proof of appropriate insurance and such other information required by the applicable statutes and regulations within sixty (60) days of the date of this Order; or (2) to request and obtain from the Commission additional time to comply with the requirements stated above, shall result in the authorization approved in this Order being revoked.

4. That upon compliance with the filing of information as required by S.C. Code Ann. §58-23-10, et seq. (1976), as amended, and 26 S.C. Code Ann. Regs. 103-100, et seq. (1976), as amended, a Certificate shall be issued by the ORS to the Applicant authorizing the motor carrier services granted herein.

5. That prior to compliance with the requirements regarding the filing of certain information with the ORS and receipt of a Certificate, the motor carrier services authorized by this Order may not be provided.

6. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

A handwritten signature in black ink, reading "Randy Mitchell", with a long horizontal stroke extending to the right.

---

Randy Mitchell, Chairman

ATTEST:

A handwritten signature in black ink, reading "G. O'Neal Hamilton", written in a cursive style.

---

G. O'Neal Hamilton, Vice Chairman

(SEAL)